IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4738 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ISHWARSINH DHARSINH THAKORE

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner

MR SJ DAVE, AGP for Respondent Nos.1, 2 & 3

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 1-4-2000 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and also perused the material on record. He has submitted that order of detention has been based on four offences registered against him before Meghaninagar Police Station. He has further submitted that statements of two independent witnesses have been recorded on 29-3-200 and same have been verified on 31-3-2000 and order of detention has been passed on 1-4-2000. But he has restricted his argument on the point that representation has been made by the petitioner on 29-4-2000 demanding certain documents and same has not been forwarded by the authority till 11-5-2000 and, therefore, there is a delay in forwarding the representation which is fatal to the order of detention. Learned Addl. Govt. Pleader has fairly admitted the same.

4. It has been held in a case of Urmilaben Navnitlal Gandhi Vs. The Commissioner of Police, Surat City and Others, 1994(2) G.L.H. (U.J.) 10 at head note (A) as under:

> "(A) Preventive Detention--Gujarat Prevention of Anti-Social Activities Act, 1985--Delay of five days in considering representation not properly explained--Held, detention invalid."

In the above unreported judgment, a representation of the detenu dated 12th October, 1993, which was received by the detaining authority on 14th October, 1993 was rejected on 15th October, 1993. The said representation was forwarded to the State Government on 16th October, 1993, but the office forwarded it to the State Government on 19th/21st October, 1993. It was received by the State Government on 26th October, 1993 and rejected on 27th October, 1993. The Court, applying the ratio in Harish Pahava Vs. State of Uttar Pradesh, AIR 1981 SC 1126, has observed in the above unreported judgment that the said delay of five days, i.e. from 16th October, 1993 to 21st October, 1993 in forwarding the representation was unreasonable and not properly explained vitiating the continued detention of the detenu.

5. Whereas in the instant case, it appears that though representation has been made on 29-4-2000 by the petitioner, it has not been forwarded till 11-5-2000. So, there is a delay of 12 days in forwarding the representation. It is to be noted that no affidavit explaining satisfactorily the said delay caused in forwarding the representation has been filed by the respondents. As representation of the petitioner has not been forwarded by the authority in time, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal.

6. In view of the above, the petition is allowed. The order of detention dated 1-4-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Ishwarsinh Dharsinh Thakore is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)